

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CH ROBINSON WORLDWIDE, INC.,

Civil No. 1:10-cv-1601 (ADM/JSM)

Judge: DAN A. POLSTER

Plaintiff,

v.

MAXXUM GROUP, LLC, Tetrapoly, LLC,
Alex and Debra Kowalski, Peter Kowalski,
Brian Donahue, Tim Carter and Andrew
Kowalski

AFFIDAVIT OF NATHAN W. NELSON

Defendants.

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Nathan W. Nelson, being first duly sworn under oath, states as follows:

1. I am an attorney with Virtus Law P.L.L.C., attorney for the Plaintiff, CH Robinson Worldwide, Inc., in the above referenced matter.
2. I submit this affidavit in support of motion to enforce settlement agreement set before the Honorable Judge Dan A. Polster.
3. Attached hereto as Exhibit A is a true and correct copy of the Electronic correspondence between Plaintiff's counsel and Tetrapoly Defendants' counsel.
4. Attached hereto as Exhibit B is a true and correct copy of the Electronic correspondence dated April 19, 2010, from Plaintiff's counsel to Tetrapoly Defendants' counsel formalizing the language for the sworn affidavits and inquiring into the \$10,000.00 payment.
5. Attached hereto as Exhibit C is a true and correct copy of the Electronic correspondence dated April 19, 2011 from Tetrapoly Defendants' counsel responding by stating that he was tied up with trial.

6. Attached hereto as Exhibit D is a true and correct copy of the Electronic correspondence dated May 17, 2011 following up with Tetrapoly Defendants' counsel regarding the completion of the sworn affidavits and payment of the \$10,000.00.

7. Attached hereto as Exhibit E is a true and correct copy of the Electronic correspondence dated May 19, 2011 from Tetrapoly Defendants' counsel replying that he just had returned from trial and that he would get back to Plaintiff after speaking with his clients.

8. Attached hereto as Exhibit F is a true and correct copy of the Electronic correspondence dated May 24, 2011, May 31, 2011, and June 13, 2011 from Plaintiff's counsel to Tetrapoly Defendants' counsel looking for the sworn affidavits and payment in the amount of \$10,000.00.

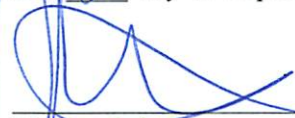
9. Attached hereto as Exhibit G is a true and correct copy of the Electronic correspondence dated June 13, 2011, from Tetrapoly Defendants' counsel responding that Tetrapoly could no longer pay Plaintiff pursuant to the terms of the Settlement Agreement.

Further, your Affiant sayeth naught.



Nathan W. Nelson

Subscribed and sworn to before me
this 8th day of September, 2011.



Notary Public



To: Nathan W. Nelson

Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

That works. I have a meeting on Friday that should be over at about 1:30 EST.

Paul R. Harris

Ulmer|Berne|LLP

Direct:(216)583-7072

From: Nathan W. Nelson [mailto:nnelson@virtuslaw.com]

Sent: Tuesday, February 08, 2011 11:13 AM

To: Harris, Paul

Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Hello Paul – my court schedule has been crazy. Can I give you a call on Friday afternoon to discuss?

From: Harris, Paul [mailto:pharris@ulmer.com]

Sent: Friday, February 04, 2011 11:14 AM

To: Nathan W. Nelson

Cc: Yeagley, David

Subject: CH Robinson v. Maxxum, et al. - Settlement

Nathan,

Per the message I left with your receptionist today, please give me a call as soon as possible to discuss fulfilling the settlement in the CH Robinson v. Maxxum, et al. matter.

Thanks,
Paul

Paul R. Harris



direct 216.583.7072 Ulmer & Berne LLP
direct fax 216.583.7073 1660 West 2nd Street
pharris@ulmer.com Suite 1100
www.ulmer.com Cleveland, Ohio 44113-1448

Cleveland

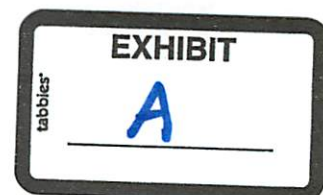
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Cincinnati

Chicago

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Nathan,

I am preparing for a 2-week trial in Akron, Ohio that starts on April 25. I forwarded your e-mail to my client and will work with them to get the \$10K moved into our trust account. I will work on affidavits with them after the trial and get them to you as soon as possible.

Best,
Paul
Paul R. Harris
Ulmer|Berne|LLP
Direct:(216)583-7072

From: Nathan W. Nelson [mailto:nnelson@virtuslaw.com]
Sent: Tuesday, April 19, 2011 12:44 PM
To: Harris, Paul
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Paul,

I have attached a guideline so to speak of matters I would like covered in the affidavits of your clients. If you have any questions, give me a call. Have your clients deposited 10k in your trust account?

Best Regards,

Nathan Nelson | Attorney

main office: 7040 Lakeland Ave, Ste 111 Sheraton Office Bldg, Brooklyn Park, MN 55428
satellite office: 1191 Northland Dr., Ste 175, Mendota Hts, MN 55120
main: 763.432.2169; **direct dial:** 763.432.2867 **fax:** 763.447.3591



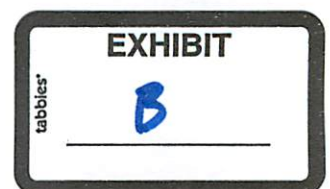
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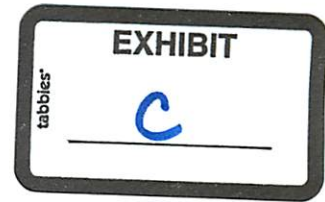
From: Harris, Paul [mailto:pharris@ulmer.com]
Sent: Tuesday, February 08, 2011 10:21 AM



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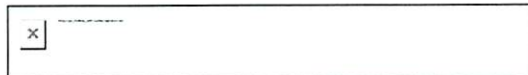
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Best Regards,

Nathan Nelson | Attorney

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main: 763.432.2169; **direct dial:** 763.432.2867 **fax:** 763.447.3591



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From: Nathan W. Nelson
Sent: Tuesday, May 31, 2011 3:20 PM
To: 'Harris, Paul'
Subject: FW: CH Robinson v. Maxxum, et al. - Settlement

Paul:

Any update from your clients?

Nathan

From: Nathan W. Nelson
Sent: Tuesday, May 24, 2011 2:45 PM
To: 'Harris, Paul'
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Hello Paul:

Any word from your clients?

Nathan

From: Harris, Paul [mailto:pharris@ulmer.com]
Sent: Thursday, May 19, 2011 2:27 PM
To: Nathan W. Nelson
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Hi Nathan,

Hope you are well. I just got back from my jury trial. Thankfully it ended with a jury verdict in our favor, but I have been consumed by that trial for the past month. I will follow up with Tetrapoly asap and get back to you so we can move this toward completion.

Best,
Paul

Paul R. Harris
Ulmer|Berne|LLP
Direct:(216)583-7072

From: Nathan W. Nelson [mailto:nnelson@virtuslaw.com]
Sent: Tuesday, May 17, 2011 5:55 PM
To: Harris, Paul
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Paul,



Wanted to follow up regarding this matter. Are we close to completion?

Nathan

From: Harris, Paul [mailto:pharris@ulmer.com]
Sent: Wednesday, April 20, 2011 3:58 PM
To: Nathan W. Nelson
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Thanks Nathan.

Paul R. Harris
Ulmer|Berne|LLP
Direct:(216)583-7072

From: Nathan W. Nelson [mailto:nnelson@virtuslaw.com]
Sent: Wednesday, April 20, 2011 4:45 PM
To: Harris, Paul
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

No problem. Good luck at trial. I will check back with you mid-May.
With kind regards,

Nathan W. Nelson
Virtus Law, PLLC
7040 Lakeland Ave, Suite 111
Brooklyn Park, MN 55428
Direct Dial: 763-432-2867
Fax: 763-447-3591

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From: Harris, Paul [pharris@ulmer.com]
Sent: Wednesday, April 20, 2011 3:34 PM
To: Nathan W. Nelson
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

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Hi Nathan,

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Best,
Paul

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Direct:(216)583-7072



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Sent: Tuesday, May 17, 2011 5:55 PM
To: Harris, Paul
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Paul,

There have been intervening and superseding circumstances during this period of delay that have had a drastic impact on Tetrapoly and its ability to pay \$10,000.00 to CH Robinson. In February 2011, Tetrapoly had a catastrophic machine shutdown as the result of a part failure. A replacement part was immediately ordered from the Italian manufacturer of the equipment, Costarelli OC, the only provider of replacement parts. The part was delayed in customs for a week in Chicago on its way to Cleveland. Tetrapoly eventually received the part and started processing materials again, but the damage done to the business was significant. Then, in May 2011, a regional bank took ownership of the processing equipment (Tetrapoly leased the equipment) and Tetrapoly could no longer process materials. Tetrapoly is no longer a processing business, and two of the three Members of the business plan to leave. To sum it up, Tetrapoly is facing dire circumstances.

We prefer to work out a resolution that is in both of our clients' interests. While the \$10,000 is obviously a problem, Matthew Kowalski and Brian Donahue are still willing to provide affidavits to settle the case. We are finalizing drafts of affidavits with that end in mind. I am sorry that these circumstances have developed - and believe me, so is Tetrapoly - but all I can do is make you aware of the changes and offer to discuss a resolution. Please call me to do so.

Best,
Paul

Paul R. Harris
Ulmer|Berne|LLP
Direct:(216)583-7072

From: Nathan W. Nelson [mailto:nnelson@virtuslaw.com]
Sent: Monday, June 13, 2011 12:29 PM
To: Harris, Paul
Subject: FW: CH Robinson v. Maxxum, et al. - Settlement

Paul:

Status update? My client is quickly running out of patience. I need some type of update and ETA or we will need to pursue other avenues.

Best Regards,

Nathan Nelson | Attorney

main office: 7040 Lakeland Ave, Ste 111 Sheraton Office Bldg, Brooklyn Park, MN 55428
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Best,
Paul

Paul R. Harris
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Direct:(216)583-7072

From: Nathan W. Nelson [mailto:nnelson@virtuslaw.com]
Sent: Tuesday, May 17, 2011 5:55 PM
To: Harris, Paul
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Paul,

Cc: Tim Fafinski (timf@greenleafgroup.com)
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Paul:

We had discussed your clients depositing the settlement funds in your account back in early February. As such, my clients are not inclined to waive the financial portion of the settlement agreement.

Please have your clients finalize their affidavits and remit the sums pursuant to the settlement by Friday, July 1, 2011. If your clients fail to do so we will have no choice but to move the court for an entry of judgment pursuant to the settlement agreement.

With kind regards,

Nathan W. Nelson
Virtus Law, PLLC
7040 Lakeland Ave, Suite 111
Brooklyn Park, MN 55428
Direct Dial: 763-432-2867
Fax: 763-447-3591

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Sent: Monday, June 13, 2011 4:17 PM
To: Nathan W. Nelson
Cc: Yeagley, David
Subject: RE: CH Robinson v. Maxxum, et al. - Settlement

Nathan,

We reached an agreement to resolve this case on December 15, 2010. That agreement included affidavits from Brian Donahue and Matthew Kowalski regarding their departure from Maxxum Group, Inc. and the establishment of Tetrapoly, LLC ("Tetrapoly"). You were to provide us with a list of items that were to be addressed in those affidavits. We did not hear from you for over a month, so on January 26, 2011, I sent you an e-mail regarding fulfillment of the settlement. I did not hear back from you, so on February 4, I called and e-mailed you again. You responded on February 8, but I did not receive the list of items to be addressed in the affidavits until April 19, 2011, more than four months after the parties agreed to the settlement terms.



There have been intervening and superseding circumstances during this period of delay that have had a drastic impact on Tetrapoly and its ability to pay \$10,000.00 to CH Robinson. In February 2011, Tetrapoly had a catastrophic machine shutdown as the result of a part failure. A replacement part was immediately ordered from the Italian manufacturer of the equipment, Costarelli OC, the only provider of replacement parts. The part was delayed in customs for a week in Chicago on its way to Cleveland. Tetrapoly eventually received the part and started processing materials again, but the damage done to the business was significant. Then, in May 2011, a regional bank took ownership of the processing equipment (Tetrapoly leased the equipment) and Tetrapoly could no longer process materials. Tetrapoly is no longer a processing business, and two of the three Members of the business plan to leave. To sum it up, Tetrapoly is facing dire circumstances.

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